IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2917 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ORPAT CHARITABLE TRUST

Versus

COMMISSIONER OF INCOME TAX

Appearance:
MR JP SHAH for Petitioner
MR MIHIR JOSHI for MR MR BHATT for Respondent

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 13/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. The petitioner, a public Charitable Trust has challenged the order dated 16.4.2001, passed under Section 80G(5) of the Income-tax Act, 1961 (hereinafter to be referred to as "the Act") by the Commissioner of Income-tax, Rajkot, i.e. the respondent.

#. The petitioner had approached the respondent seeking renewal of certificate under Section 80G(5) of the Act in view of the fact that the petitioner had already been certified to be a Charitable Trust right from 10th June, 1993 till 31st March, 2000. It is undisputed position that the petitioner-Trust has fulfilled all other requirements as stipulated under the provisions of the Act for being entitled to certificate under Section 80G of the Act.

#. The respondent by his order dated 23.2.2001 (Exh.B) refused to grant approval under Section 80G(5) for financial year 1st April 2000 to 31st March, 2001 because according to the respondent, the petitioner-Trust had acted in contravention of Section 11(5) of the Act when it had invested Rs. 4,50,000/= as deposit with M/s. Modern Denim Ltd. and another sum of Rs. 4,50,000/= as deposit with M/s. Modern Teri Towels Ltd. In view of the fact that the said Company was not one of the approved institutions in which investments could be made by a Charitable Trust, the respondent passed an order on 23rd February, 2001.

#. The petitioner approached this Court by way of Special Civil Application No. 1899 of 2001 and this Court (Coram: B.C.Patel & D.A. Mehta, JJ), vide order dated 29th March, 2001, after hearing both the sides, directed the respondent to consider the matter afresh without being influenced by the order passed by him earlier as well as by this Court, keeping in mind the decision of the Division Bench of this Court in the case of N.N. Desai Charitable Trust vs. C.I.T., 246 ITR 452. (emphasis supplied) Accordingly, the respondent has passed an order on 16th April, 2001 (Exh. K) which is under challenge in the present petition.

#. The Court is constrained to take note of the fact that inspite of the specific direction to the respondent that he should not be influenced by his earlier order, he has wilfully chosen to reiterate what was stated by him in his earlier order dated 23rd February, 2001. In para 6 of the order dated 16th April, 2001, he has distinguished the decision of this Court in the case of N.N. Desai Charitable Trust (supra) by stating that the ratio of the said decision relates to the assessment for

the past year, but in the present case, the application under Section 80G(5) was refused for the current year itself, on account of non-compliance to the statutory requirement on the part of the assessee-Trust as discussed in detail in the order dated 23rd February, 2001. Once again in para 8 of his order, the respondent states as under.

> "In the present case, the requirement of recording satisfaction by the CIT in writing that conditions laid down in clause (i) to (v) of sub-clause (5) of section 80G cannot be complied with because, as discussed in the order dated 23.2.2001, there is non-compliance to clause (i) of section 80G(5) of the Income tax Act, 1961." (emphasis supplied)

#. Therefore, it is apparent that the respondent has not taken care to apply his mind afresh even though directed by this Court. He has merely referred to his earlier order and rested content with that. This was not expected when the matter had been remanded with specific directions.

#. The decision of this Court in the case of N.N. Desai Charitable Trust (supra) has laid down thus after examining the scheme of the Act with special reference to provisions of Section 80G and Section 11 of the Act.

> "The eligibility of the donation for deduction has to be considered with reference to the point of time at which donation is made and not with respect to the time in future depending on assessments of the donee. That is where the use of the verb in future tense "would" has been used and not in present or past perfect tense so as to take into consideration, the actual inclusion or exclusion or the extent of inclusion or exclusion. The direct nexus of clause (i) of sub-section (5) of section 80G, is to the eligibility of the institution or the fund to claim that its income is not liable to be included in the computation of the total income. The two are different concepts. First, whether an institution or fund is such whose income is not liable to be included in the computation of the total income depends on its status or character. The second is the actual assessment of income, which necessarily takes place in future after donation is received by the donee and on fulfilment of other conditions about

> application of income by the eligible trusts, which in the very nature of things can operate only after receipt of income. The actual extent of exclusion from or inclusion in the computation of the total income of the receipts of such institution or fund, depends on fulfilment of further conditions which may or may not exist at the close of the year and has no direct relation to the purpose for which the provision is made. The latter falls in the realm of the assessment of the trust, institution or fund which derives income which is not ordinarily includible in its total income. The liability to assessment is not affected by issuance of recognition certificate or approval certificate issued under clause (vi) of sub-section (5) of section 80G nor does it depend upon whether the donor is ultimately getting deduction in respect of such donation." (Emphasis supplied).

#. Applying the aforesaid ratio to the facts on hand, it is apparent that even if the ground about contravention of provisions of Section 11 (5) of the Act is validly taken by the respondent, the same would have a bearing only at the point of time of the assessment of the petitioner-Trust and would not be a material consideration insofar as granting of approval under Section 80G(5) of the Act is concerned. It may be a material factor, but cannot be the sole determinative factor for the purposes of arriving at a decision as to whether certificate under Section 80G(5) is to be granted to an assessee or not. In the present case, it was pointed out to the respondent that the deposits in question were not repaid by the two Limited Companies because of the financial difficulties, but in light of the fact that one of the trustees through whom the deposits had been placed, owning up the moral responsibility had paid up the funds to the Trust on his own, insofar as the petitioner-Trust was concerned its funds having been recovered, only technical breach ought not to have weighed with the respondent.

#. It is pertinent to note that the certificate issued under Section 80G(5) of the Act is normally granted for a block period and is granted in advance so as to enable the Charitable Trust to place that fact before the donors while inviting donations. It also ensures that the donors who are in no way connected with the Trust are assured that they do not suffer any disallowance in their respective assessments. This practice is demonstrated by way of illustration during the course of the hearing, by

placing on record certificate dated 2nd November, 2001 issued by the respondent to the petitioner-Trust for the period from 1st April, 2001 to 31st March, 2003.

#. In view of what is stated hereinbefore and in light of the ratio of the decision of this Court in the case of N.N. Desai Charitable Trust (supra), this petition is required to be allowed. The order dated 16.4.2001 passed by the respondent is quashed and set aside and the respondent is directed to grant renewal to the petitioner-Trust under Section 80G(5) of the Act for the period from 1st April, 2000 to 31st March, 2001 immediately. Rule is made absolute to the aforesaid extent. There shall be no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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